

## Council of the European Union Codecision Guide (September 2000)

**Caption:** Published in the second edition of the Council of the European Union Guide of September 2000, the Codecision Guide explains how this decision-making process works following the changes introduced by the Treaty of Amsterdam. The Council Guide is produced by the Council General Secretariat as an internal document, having no legal effect, aimed at helping the Presidency and Member State delegations.

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## Council of European Union Guide (September 2000) Co-decision Guide

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### Co-decision Guide

#### Chapter I. Conduct of the procedure

1. First reading (no time limit)

The Commission, using its right of initiative, submits its legislative proposal simultaneously to the Council and to the European Parliament.

The Treaty of Amsterdam introduced the possibility of bringing co-decision dossiers to a conclusion at the end of the first reading. The application of this new provision requires work to be conducted in both institutions in parallel, an intensive exchange of information, and considerable availability of the Council Presidency for exploratory contacts and negotiations with the European Parliament.

After the European Parliament has voted on its opinion in plenary session, the Council:

##### **(a) Accepts the outcome of the European Parliament's first reading**

In this case, where it has been possible to reach agreement during the parallel exercise at first reading, the **Council adopts the legislative act.**

The legislative act — the text of the Commission proposal if the European Parliament has not introduced any amendments, or the text of the amended Commission proposal — after legal/linguistic revision — is adopted by the Council (PE-CONS document), and then submitted for the signature of the Presidents and Secretaries-General of the European Parliament and the Council (LEX PE-CONS document) and published in the Official Journal.

### **(b) Does not accept the outcome of the European Parliament's first reading**

In this case, where no agreement could be reached, the **Council adopts its common position.**

The text of the common position, after legal/linguistic revision, is sent to the European Parliament, together with the statement of reasons and any statements by the Council and/or the Commission made for the Council's minutes. The Commission then informs the European Parliament fully of its position.

The first Council reading will therefore result in either acceptance of the outcome of the first European Parliament reading and adoption of the act, or the non-acceptance of that outcome and adoption of the Council's common position (the subject of the second European Parliament reading).

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#### **For the record: Arrangements for the first European Parliament reading <sup>(1)</sup>**

After receiving the Commission's proposal, the President of the European Parliament refers it to the relevant parliamentary committee for examination of its substance, and if appropriate, to other committees which may issue an opinion on the matter (Rule 54 of the Rules of Procedure of the European Parliament).

After deciding on the procedure to be followed for the examination of the proposal, the committee appoints a rapporteur on the Commission proposal from among its members or permanent substitutes, unless it has already done so, on the basis of the Commission's annual legislative programme (Rule 144 of the Rules of Procedure of the European Parliament).

The rapporteur is responsible for presenting a draft report to the parliamentary committee. In this draft, the rapporteur summarises the Commission's proposal and the views of the different parties involved. During the debate within the parliamentary committee, the Commission may defend its proposal and answer questions from members of the committee. The parliamentary committee first examines the legal basis (Rule 53). During the examination of a proposal, the relevant parliamentary committee requests the Commission and the Council to keep it informed about the progress of this proposal in the Council and its working parties (Rule 55).

The plenary session discusses the legislative proposal on the basis of the report drawn up by the relevant committee <sup>(2)</sup>, which will include any proposed amendments to the proposal, a draft legislative resolution, and if appropriate, an explanatory statement.

In the draft resolution, the committee proposes to the plenary either the approval or the rejection of the Commission proposal, or the tabling of amendments (Rules 58, 59 and 60 of the Rules of Procedure of the European Parliament). After the report has been adopted by the committee, it is still possible for an MEP or a group of MEPs, or for the rapporteur, often acting on behalf of a political group, to table amendments during the plenary debates. In principle, political groups coordinate their respective positions during the debates and during the voting in committee and in plenary sessions.

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[...]

### **2. Second European Parliament reading (time limit: 3 (+ 1) months)**

The date of receipt of the Council's common position (in principle, on the Monday of the week of the European Parliament plenary) marks the beginning of the three-month time limit for the second European Parliament reading <sup>(3)</sup>.

This time limit may be extended by a further month. The vote in plenary session must take place within this time limit and no later than the end of the fourth month. Compliance with that time limit concerns the vote in plenary and not the forwarding of the outcome of that vote to the Council.

The parliamentary committee examines the Council's common position and makes its recommendation. The plenary considers the matter on the basis of that recommendation and proceeds with a vote. The outcome of the vote may lead to three different situations:

#### **(a) Approval of the common position**

In this case, **the act is deemed to have been adopted** in accordance with the common position. Contrary to the procedure followed before the entry into force of the Treaty of Amsterdam, the Council no longer needs to adopt the act. Consequently, the legislative act (= common position, given in the form of a LEX PE-CONS document) is submitted directly for the signature of the Presidents and Secretaries-General of the European Parliament and of the Council and published in the Official Journal.

If the European Parliament does not vote on the common position within the time limit of 3+1 months, the same procedure applies.

#### **(b) Rejection of the common position**

Rejection of the common position, on the basis of an absolute majority of MEPs (minimum of 314 votes), terminates the procedure, and the proposed **act is then deemed not to have been adopted**. Examination of the dossier may be resumed only on the basis of a new proposal from the Commission.

(Consequently, the Treaty of Amsterdam eliminates the phase of intended rejection of the common position, followed by the 'small conciliation'. This possibility, envisaged by the Maastricht Treaty, has only been applied twice in the past).

#### **(c) Proposal of amendments to the common position**

Amendments to the common position are voted on the basis of an absolute majority of MEPs. The outcome of the vote is notified to the Council and the Commission, and the latter must issue an opinion on the amendments.

### 3. Second Council reading (time limit: 3 (+ 1) months)

The time limit for the second Council reading starts to run from the official receipt of the amendments resulting from the second European Parliament reading.

The Council may accept or reject these amendments <sup>(4)</sup>:

(a) **Amendments accepted** (the Council acts by qualified majority or unanimously, depending on the subject matter, and always unanimously if the amendments were the subject of a negative opinion from the Commission) — **act deemed to have been adopted**.

If the Council agrees to accept all the amendments, the act is deemed to have been adopted in the form of the common position thus amended. The legislative text (LEX PE-CONS document) is then submitted directly for the signature of the Presidents and Secretaries-General of the European Parliament and of the Council and published in the Official Journal.

(b) **Not all amendments are accepted** — convening of the Conciliation Committee. **Within a time limit of 6 (+ 2) weeks** after the Council notes the impossibility of accepting all the amendments, its President, in agreement with the President of the European Parliament, convenes the **Conciliation Committee**. This

binding time limit is one of the major changes introduced by the Treaty of Amsterdam. In the past, the expression ‘without delay’ in the Maastricht Treaty had often been applied in a somewhat lax manner (more than one year for some matters).

[...]

#### 4. Conciliation (6 (+ 2) weeks)

##### — Preparatory work

The time limit for the work of the Conciliation Committee starts to run from its first meeting. Before that date, it is essential to carry out preparatory work. The whole period of 6 (+ 2) weeks laid down as the time limit for convening the Conciliation Committee, as well as that between establishing politically that it is impossible to accept the amendments in the second European Parliament reading and the adoption of the decision by the Council, may be used for technical and negotiation contacts aimed at bringing the positions closer before the first meeting of the Conciliation Committee.

The preliminary negotiation meetings of the Conciliation Committee <sup>(5)</sup> are conducted, on the part of the Council, by the Chairman of Coreper, on the basis of a mandate from Coreper and/or in the framework of his or her personal initiative and responsibility. The results of these trialogues are then submitted to Coreper for examination. For certain matters, the trialogues may be preceded or followed by technical meetings between the secretariats of the three institutions, and the Chairman of the working party may also sometimes take part.

The trialogues and technical meetings prior to the first meeting of the Conciliation Committee will often make it possible to bring the conciliation to a conclusion during this first meeting, sometimes even in the form of a simple declaration of the prearranged agreement (a kind of ‘A’ item, to use the terminology of Council meetings). In other cases, several meetings of the Conciliation Committee will be necessary before an agreement on a joint text can be reached. Each of these meetings may themselves be preceded by informal trialogues and technical meetings.

##### — Proceedings of the Conciliation Committee

The **Conciliation Committee** brings together delegations from Parliament and from the Council, each consisting of 15 members. The Committee is chaired jointly by a Vice-President of the European Parliament and by a minister of the Member State holding the Presidency.

The **Council delegation** consists of the members of the Council or their representatives. As a general rule, it is made up of the representatives of the Member States within Coreper.

The **European Parliament delegation** consists of 15 members and 15 substitutes (the latter without a right to vote except in the absence of a member of their political group). Three Vice-Presidents of the European Parliament are permanent members of the Conciliation Committee and take turns to co-chair it. The other 12 MEPs in the delegation are appointed by political groups. The great majority belong to the parliamentary committee responsible for the matter. In most cases, the European Parliament delegation tries to reach a consensus in its discussions. In the case of a vote, which may take place at any stage of the conciliation, including for questions of procedure, decisions are taken by a minimum of eight votes in favour.

The **Commission**, represented in principle by the Commissioner responsible for the matter, takes part in the Conciliation Committee’s proceedings and takes all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. Such initiatives may include, *inter alia*, draft compromise texts reflecting the positions of the Council and the European Parliament, with due regard to the role conferred upon the Commission by the Treaty. The Commission’s position has no influence, however, on the majority rules for the adoption of the joint text by the Conciliation Committee: qualified majority

within the Council delegation (unanimity where the Treaty specifies an exception to the qualified majority rule) and simple majority within the European Parliament delegation. The Commission's right of initiative therefore plays no role in the conciliation phase (see Article 250 of the Treaty).

Immediately before the meeting of the Conciliation Committee, the two co-Chairmen and the Commissioner meet in a **formal triologue** for a general overview of the major issues involved in conciliation and the best way to broach them during the meeting. This triologue is preceded, as a general rule, by a **preparatory meeting** of each delegation.

The Committee has available to it the Commission proposal, the Council's common position, the amendments proposed by the European Parliament, the Commission's opinion thereon (meeting file) and a **joint working document** of the European Parliament and Council delegations. This working document normally consists of two parts: part A contains the elements of the compromise already agreed during the preparatory work and part B, the unresolved points with the respective negotiating positions (synoptic table in four columns).

The Conciliation Committee meets alternately at the premises of the Council and those of the European Parliament. This alternation rule applies both from one dossier to the next and within each one, and there are many exceptions to this rule for logistic reasons (availability of meeting rooms and/or teams of interpreters). The rules governing the languages of these meetings are the same as for Council meetings (11 languages). The institution hosting the first meeting of the Conciliation Committee is responsible for editing the joint text and the forwarding letter, and, after definitive adoption of the legislative act in question by the European Parliament and the Council, for the signing of the act by the Presidents of the European Parliament and of the Council and for its publication in the Official Journal.

If the Committee fails to approve the joint text within the time limit set by the Treaty, the proposed act is deemed not to have been adopted.

#### 5. Third European Parliament and Council reading (time limit: 6 (+ 2) weeks)

If the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority (unanimity where the Treaty stipulates an exception to the qualified majority rule), each have a period of 6 (+ 2) weeks in which to adopt the **act** in question **in accordance with the joint text**. If either of the two institutions fails to approve the proposed act within that period, it is deemed not to have been adopted. The period of six weeks, which may be extended by two weeks, runs from the date of approval of the joint text, which does not necessarily correspond to the date of the last meeting of the Conciliation Committee, but to the date of the signature by the two co-Chairmen of the Conciliation Committee, of the letter forwarding the joint text, addressed to the Presidents of the European Parliament and of the Council.

#### 6. Extension of time limits

The Maastricht Treaty provided for the possibility of extending the time limits of three months and six weeks by a maximum of one month and two weeks respectively, by common agreement between the European Parliament and the Council. The Treaty of Amsterdam simplifies the procedure for these extensions, by stipulating that the time limits may be extended at the initiative of the European Parliament or of the Council.

[...]

## Chapter II. The Presidency

### 1. Planning of proceedings

When establishing its work schedule, each Presidency reserves a certain number of dates for Conciliation Committee meetings <sup>(6)</sup>. This exercise is carried out, in principle a year in advance, between the European Parliament and Council Secretariats, in agreement with the respective authorities. The fixing of these dates presupposes the availability of the members of the Parliament and Council delegations, and, in particular, of the member of the government holding the Presidency who will co-chair the Conciliation Committee.

On the other hand, it would be useful in principle at the beginning of each six-month period, or even slightly earlier, for the Chairman of Coreper to have a preliminary contact with the three Vice-Presidents responsible for conciliation as well as the various Chairmen of the parliamentary committees and rapporteurs involved in the co-decision matters in order to discuss their situation and establish jointly a timetable and methodology for priority work which will be carried out during the six-month presidency.

This discussion would cover:

(a) matters for which conciliation proves necessary after the second European Parliament reading, or probable depending on the likely outcome of a forthcoming second European Parliament reading;

(b) matters undergoing a second European Parliament reading for which exchanges of information and informal negotiations between the European Parliament and Council could turn out to be useful in order to avoid conciliation;

(c) matters undergoing a first reading which may well be concluded at first reading.

This first contact at the level of the Chairman of Coreper may be followed by contacts between the Chairmen of Council working parties and the rapporteurs for a more detailed examination of the work schedule, in particular as regards dossiers undergoing first or second European Parliament reading.

The Council and European Parliament Secretariats organise these meetings and draw up, on the instructions of their respective authorities, the preparatory documents (listing of priority dossiers, provisional timetable of work, proposed working methods).

As regards work for first readings, the planning of proceedings for examining dossiers within the working parties and Coreper at the Council and within the parliamentary committees at the European Parliament must be carried out in such a way as to allow a certain degree of parallelism in their conduct.

## 2. Role of the Presidency during the different phases of the co-decision procedure

### **First reading**

#### *(a) Parallel examination — role of the Commission departments*

Initially, and for each dossier, the Presidency must examine the Commission's proposal at working party level, referring to Coreper as necessary. A parallel examination must be carried out within the relevant parliamentary committee.

The Council working party examines the Commission proposal while following the progress of work within the relevant parliamentary committee. The Commission departments, which attend the European Parliament and Council meetings, may play an important role as information carriers, while respecting the working rules of each institution.

#### *(b) Tripartite meetings*



From the moment the examination of the dossier reaches a certain degree of maturity — making it possible to know the positions of the delegations on the main questions it raises — the Presidency may start contacts with the representatives of the European Parliament at parliamentary committee level (rapporteur/Chairman of the parliamentary committee). Commission officials also attend these meetings, where the Presidency (Chairman of the working party/Chairman of Coreper) is assisted by the DG in charge of the dossier and by the Co-decision Backbone.

After these initial contacts, which make it possible to clarify the respective points of view, identify the essential points on which views differ and thus establish an initial evaluation of the possibilities of concluding the dossier at first reading, the Presidency notifies Coreper of the results (on Parliament's side, the same exercise takes place with examination in parliamentary committee). Coreper, if necessary after examining the matter within the working party, will evaluate the possibilities of an agreement at first reading and will draw up, if appropriate, any proposals for a compromise.

### *(c) Informal negotiation meetings*

Thus, for certain dossiers, these initial contacts may continue by way of informal negotiation meetings, for which the Presidency will, in principle, have a mandate from Coreper. During these informal negotiation meetings, the Chairman of Coreper and the European Parliament representative(s) will seek to bring the positions of the two institutions closer together, with the aim of achieving a result from the first European Parliament reading (amendments to the Commission proposal or no amendments) which is acceptable to the Council. Even in a situation where it is clear that agreement will not be reached at first reading, continued contacts with Parliament may be justified in order to define more clearly the points of disagreement and to reduce the number of possible European Parliament amendments at second reading.

The first reading will thus be characterised by this continuous movement of contacts/negotiations with Parliament, followed by an examination by both Parliament and Council of the outcome of these contacts and setting out the respective negotiating positions. This movement is also characteristic of the preparatory phase for conciliation.

### **Second European Parliament reading**

During this phase of the procedure, the Council must closely follow the work of Parliament. For certain dossiers, the Presidency may be required to establish contacts with European Parliament representatives, in order to facilitate the acceptance of the Council common position, to avoid its rejection or to persuade the European Parliament to limit the introduction of amendments to the common position to those acceptable to the Council. In this case, tripartite meetings and informal negotiation meetings would be organised along the lines of those during the first reading.

Even before the entry into force of the Treaty of Amsterdam, several Presidencies pursued, in a number of cases, a similar negotiation exercise aimed at having the European Parliament approve amendments which would be acceptable to the Council, thus avoiding the need for conciliation.

### **Second Council reading <sup>(7)</sup>**

#### **Examination of the amendments within the working party**

Once the information note from the General Secretariat about the results of the second European Parliament reading, including as an annex the European Parliament resolution and the proposed amendments, is available, the Presidency ensures that the working party examines the European Parliament amendments as soon as possible.

This examination must be carried out in depth and not be confined to merely identifying the amendments rejected and those that may be accepted by the Council (or, to simplify, the rejection of all the amendments collectively). If all the amendments are not accepted, the working party must start examining possible



compromise texts and propose them to Coreper as from its first report.

#### *(a) Adoption of the act*

If the outcome of the working party's proceedings, as confirmed by Coreper, leads to **acceptance of all** the European Parliament **amendments**, the Secretariat draws up a 'I/A' item note with a view to adoption of the act by the Council (common position modified by the amendments) and subsequently ensures its publication in the Official Journal after signature by the Presidents and Secretaries-General of the European Parliament and the Council.

#### *(b) Convening of the Conciliation Committee*

**If not all the amendments are accepted**, the Council informs the European Parliament and the President of the Council convenes the **Conciliation Committee**, the date when the Council established that it was impossible to accept the amendments constituting the start of the 6 (+ 2) week time limit for convening the Conciliation Committee.

The Presidency may, in the case of certain complex dossiers, choose not to have the Council establish that it is impossible to accept the amendments immediately after examining them within the Working Party/Coreper, and to use part of the time for the Council's second reading (3+(1) months) for informal contacts with the European Parliament in order to **prepare for conciliation**.

In an initial phase, **technical meetings** may take place between the Chairman of the Working Party, assisted by the Council Secretariat (DG + Backbone), and the rapporteur in the presence of Commission officials. As soon as the initial negotiating positions of both institutions are well established <sup>(8)</sup>, it is possible to move on to the negotiating phase in the form of an '**informal triologue**'. This meeting is attended, on the Council side, by the Chairman of Coreper (with the incoming Chairman attending as an observer), and on the Parliament side, by the rapporteur, and sometimes the Chairman of the relevant parliamentary committee, with the Commission in principle being represented by the relevant Director-General.

## **Conciliation**

### **Preparatory phase**

In the period preceding the first meeting of the Conciliation Committee, the Presidency must be available for technical meetings (in principle, participation of the Chairman of the working party) and for informal dialogues (with the participation of the Chairman of Coreper). The Council's negotiating positions — which constitute the Presidency's mandate — are in principle drawn up in advance by Coreper, which is kept informed by its Chairman of the outcome of negotiations with the European Parliament.

In certain cases, the Chairman of Coreper takes negotiating initiatives under his own personal responsibility, which are binding only on the Presidency. This negotiating technique has increasingly been used. The first Council negotiation offer is often made in the form of a Presidency compromise. The European Parliament often also replies with the rapporteur's position. The two offers 'ad referendum' are subsequently submitted for approval by the Council (Coreper) and European Parliament delegations.

### **Meeting of the Conciliation Committee**

For meetings of the Conciliation Committee, the Presidency must ensure the participation of a member of the government (in principle, the minister responsible for the dossier) in order to co-chair the Conciliation Committee. As a general rule, and following the example of ministerial meetings, the Presidency organises a briefing with the General Secretariat of the Council before conciliation meetings.

Certain dossiers require several meetings of the Conciliation Committee. It often happens that between these meetings a political commitment from the minister co chairing the Conciliation Committee is necessary in

order to find compromise formulas within the Council and to negotiate them with his counterpart in Parliament.

### Agreement on a joint text

As soon as agreement has been reached within the Conciliation Committee (sometimes in the form of an exchange of letters between the co-Chairmen), the Council Secretariat, or the European Parliament Secretariat if the first meeting of the Conciliation Committee was held in the latter's premises, prepares, in principle in the language used during the negotiations, the draft legislative text. This document subsequently becomes available, after legal/linguistic revision, in the 11 official languages of the Community. This joint text is forwarded to the Presidents of the European Parliament and of the Council by means of a letter signed by both co-Chairmen of the Conciliation Committee (as a general rule, the Chairman of Coreper signs on behalf of the Council co-Chairman). **This forwarding letter for the joint text**, which serves as minutes of the Conciliation Committee and mentions any statements that may have been made, is also addressed, for information, to the member of the Commission who took part in the proceedings of the Conciliation Committee.

### Chapter III. General Secretariat of the Council

In the domain of legislative activity through co-decision, successive Presidencies can count, for each dossier, on the support of the Directorate-General responsible for it, and also of the Co-decision Backbone.

The table in Annex VI shows, for the entire length of the procedure, the allocation of tasks within the General Secretariat of the Council, between the various Directorates-General (departments responsible) and the Backbone.

[...]

(<sup>1</sup>) The numbers refer to the rules laid down in the 13th edition of the Rules of Procedure of the European Parliament (February 1998).

(<sup>2</sup>) Except in the case of a procedure without report or a simplified procedure (see Rule 143 of the Rules of Procedure of the European Parliament).

(<sup>3</sup>) The European Parliament has a dispute with the Council, believing that this time limit only starts to run when the President announces in plenary the forwarding of the common position (Rule 64 of the Rules of Procedure of the European Parliament).

(<sup>4</sup>) Before deciding whether or not to accept the European Parliament amendments, the Commission's opinion on them must have been referred to the Council. The Commission encloses a modified proposal with its opinion; the Council disputes this practice.

(<sup>5</sup>) Informal dialogues with the participation of delegations from Parliament and Council as well as the Commission, which takes the necessary initiatives with a view to reconciling the positions of the two delegations.

(<sup>6</sup>) In practice, many of these dates are regularly used for informal dialogues. Other dates for Conciliation Committee meetings may be set aside, as required, through the six-month period.

(<sup>7</sup>) If the European Parliament accepts, at second reading, the Council's common position, the act is deemed to have been adopted and there is no need for the Council to carry out a second reading.

(<sup>8</sup>) In the form of synoptic tables in four columns — common position, European Parliament amendments, position of the European Parliament (or of the rapporteur), position of the Council (or suggestions from the Presidency) — which, ever since the negotiation of the 'health' dossiers in December 1995, constitute the usual instrument for negotiation throughout conciliation.